

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HORTON HOMES, INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:07-CV-506-MEF
)	
LARUE BANDY, MARIE BANDY,)	
PATRICK PRITCHETT, WILLIAM)	
SHANER, ELSIE FONDREN)	
AVERETTE, WILLIAM CRUTHIRDS,)	
and SHERRIE CRUTHIRDS,)	
)	
Defendants.)	
)	

PLAINTIFF HORTON HOMES, INC.'S STATUS REPORT

NOW COMES Plaintiff Horton Homes, Inc. ("Horton Homes") through undersigned counsel and, pursuant to this Court's direction at the Status Conference held on October 25, 2007, submits the following report regarding the availability of N. Dudley Horton, Jr., to testify at the November 20, 2007 hearing, and the identity of witnesses who will be called in lieu of Mr. Horton in the event he does not testify:

1) ***Testimony by Mr. Horton.*** Undersigned counsel for Horton Homes interviewed Dr. Robert Cowles on October 30, 2007 regarding Mr. Horton's condition and his availability for testimony. A summary of the pertinent portions of this interview is attached as Exhibit "A". As a result of this interview, Horton

Homes reports as follows regarding testimony by Mr. Horton at the hearing presently scheduled for November 20, 2007:

- a) Mr. Horton will not be called to testify live in Court on November 20, 2007, absent some unforeseen, dramatic change in his condition;
- b) If the Court granted any motion by Horton Homes to reconsider its previous Order [Doc. No. 38] precluding Mr. Horton from testifying by live video conferencing, Horton Homes would call Mr. Horton to testify in that manner, in the event: (i) Mr. Horton's doctors agreed that the examination and cross examination would not endanger his health; and (ii) Mr. Horton felt capable of withstanding examination and cross examination; and
- c) At this time, Horton Homes has not decided whether it will request this Court to reconsider its previous Order and allow Mr. Horton to testify by live video conferencing.

2) *Alternative witnesses.* In the event Mr. Horton does not testify at the November 20, 2007 hearing, Horton Homes anticipates calling one or more of the following persons to testify in response to questions which would be put to Mr. Horton on direct examination:

- A. R. W. Hicks Jr.;
- B. David Giddens; and
- C. Mike Willard.

Dated this 2nd day of November, 2007.

By: s/ James L. Paul
JAMES L. PAUL
Georgia Bar No. 567600
THOMAS C. GRANT
Georgia Bar No. 297455
(Admitted *Pro Hac Vice*)

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Co-counsel for Plaintiff Horton Homes, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this date the undersigned has filed using the CM/ECF system a true and correct copy of "**Plaintiff Horton Homes, Inc.'s Status Report**" and has served the following via the CM/ECF system:

Randy A. Myers
Frank Hawthorne, Jr.
Hawthorne & Myers LLC
322 Alabama Street
Montgomery, Alabama 36104

Michael S. Harper
Michael S. Harper, P.C.
PO Box 78068
Tallasse, Alabama 36078

Dated this 2nd day of November, 2007.

By: s/ James L. Paul
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EXHIBIT "A"
TO
PLAINTIFF HORTON HOMES, INC.'S STATUS REPORT

ATTACHMENT "A"
TO
STATUS REPORT

Pursuant to the direction of the Honorable Mark E. Fuller at the Status Conference held on October 25, 2007, I interviewed Dr. Robert S. Cowles at about 5:45 p.m. on October 30, 2007. I told Dr. Cowles I was interviewing him for the purpose of furnishing to the Court a report of N. Dudley Horton, Jr's condition, specifically including Dr. Cowles' opinions about whether Mr. Horton could testify at the November 20, 2007 hearing, either live or by live video conferencing.

(1) Dr. Cowles' diagnosis was that Mr. Horton has four basic problems: (i) kidney failure; (ii) elevated PSA, indicating possibility of prostate cancer; (iii) non-functional bladder requiring a catheter; and (iv) significant electrolyte imbalance. He also has problems controlling blood pressure.

(2) Dr. Cowles stated that Mr. Horton's non-functioning bladder had placed pressure on his kidneys and had caused severe hypertension. He stated that the drainage during medical treatment had relieved this pressure and that Mr. Horton's condition was improving in this respect. He said the electrolyte balance was returning to normal. He reported that he and other doctors working with him had not yet determined whether Mr. Horton has prostate cancer.

(3) Dr. Cowles said that Mr. Horton is looking at between one to three operations within the next two months. All of these operations will be under

general anesthesia. If Mr. Horton has prostate cancer, the first operation will treat that condition. Other operations relate to bladder obstructions and kidney conditions. Dr. Cowles stated a primary challenge will be to keep Mr. Horton's blood pressure under control during these operations, because he is having trouble controlling his blood pressure.

(4) Dr. Cowles stated that Mr. Horton is not in condition to travel to Montgomery at the present time; and he did not expect Mr. Horton to be in condition to travel to Montgomery for a hearing on November 20, 2007. I asked Dr. Cowles if he could express an opinion now about whether Mr. Horton would be able to testify by live video conference on November 20, 2007, if the Court permitted this type of testimony. Dr. Cowles stated that he thought this was a possibility; however, he was concerned about Mr. Horton's blood pressure, and he was not sure that Mr. Horton's blood pressure could be controlled satisfactorily during an extended period of examination and cross examination.

Dated this 2nd day of November, 2007.

By: s/James L. Paul
JAMES L. PAUL
Georgia Bar No. 567600
THOMAS C. GRANT
Georgia Bar No. 297455
(Admitted *Pro Hac Vice*)

Co-counsel for Plaintiff Horton Homes, Inc.

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